No. 94-1253

In the Supreme Court of the United States

OCTOBER TERM 1994

JAMES F. SEXTON
Petitioner,

vs.

CITY OF TWINSBURG,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Ohio.

Petitioner's Reply Brief

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Petitioner first notes error in the caption on respondents brief in opposition. The petition is for a writ of certiorari to the Supreme Court of Ohio and not to the United States Court of Appeals for the Seventh Circuit.

Petitioner timely filed a motion for a tape recording of the trial court proceedings. The proceedings were tape recorded. Petitioner received a copy of the recording that was not transcribable. Next a portion of the original tape recording is destroyed. Petitioner was forced to resort to a Narrative Statement of Evidence. Respondent did not object to or propose any amendments to Petitioner's Statement,

so there was no dispute between the parties as to the evidence before the trial court. The clerk of the trial court submitted the Narrative Statement to the clerk of the court of appeals without first submitting it to the trial court for settlement and approval. Because it had not been submitted and approved, the appellate court then refused to consider the evidence in the Narrative Statement and sustained the judgement of the trial court.

Ohio Appellate Rule 10(A) requires the trial court clerk to submit a complete record to the clerk of the appellate court. Rule 10(B) states that it is complete when it has been settled and approved by the trial court. Rules 10(A) and 10(B) in effect impose the duty on the trial court clerk to submit the Narrative Statement for settlement and approval prior to submitting it to the clerk of the court appeals. Respondent contends that the Appellate Rule 9(C) imposes the duty of the petitioner. That is not true. In either event, Appellate Rule 9(E), which in pertinent part appears on page 4 of the Petition and is repeated here, states:

> "***If anything material to either party is omitted from the record by error or accident or is misstated therein, *** the court of appeals on proper suggestion or on its own initiative may direct that omission or mistatement be corrected, and if necessary be certified and transmitted.***"

In effect the appellate court is empowered to make any corrections that are necessary, especially where the facts are not in dispute between the parties.

In this background, the basic issue is whether the judicial interpretation of these Rules has denied petitioner the "due process" and "equal protection" to which he is entitled under the Due Process and Equal Protection Clauses of the Fourteenth Amendment in a situation where there never has been a dispute as to the facts as presented by the Narrative Statement.

Petitioner's contention is that there is no evidence in the Narrative Statement to sustain the finding of the Cuyahoga Falls Municipal Court. Where there is no evidence to support a finding, this is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. See Thompson v. Louisville, 362 U.S. 199 (1960). Also see Douglas v. Bader, Judge, 412 U.S. 430 (1973) and Barr v. City of Columbia, 378 U.S. 146 (1964). These cases were cited by petitioner in his Petition and bear repeating. They never were addressed by Respondent in its brief in opposition. It is basic that evidence is necessary to support a finding. And here there was no such evidence. The denial of a review of the evidence under these circumstances is a denial of due process and equal protection.

Once a State establishes the appellate process, it must be equally available to everyone. This is the holding in Griffin v. Illinois, 351 U.S. 12 (1956). See also Burns v. Ohio, 360 U.S. 252 (1959). These cases were cited by petitioner in his petition and again they bear repeating. Respondent never addressed them in its brief in opposition. To deny petitioner an appellate review on the merits of his case is a denial of the appellate process. And there is no dispute that petitioner has been denied an appellate review on the merits of his case. This is contrary to the

requirements of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

For the reasons set forth above and in his petitition for an writ of Certiorari petitioner submits that a writ of Certiorari should issue to review the judgement and decision of the Supreme Court of Ohio in this matter.

Respectfully Submitted,

James F. Sexton
Petitioner